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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 814

ALF M. LANDON,

Petitioner,

vs.

NORTHERN NATURAL GAS COMPANY,

Respondent.

RESPONDENT'S MOTION TO FILE SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT AND SUPPLEMENTAL BRIEF

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Law Briefs—OMAHA LINO-SLUG PRINTING CO., 418 So. 15th St.

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MOTION

Respondent, Northern Natural Gas Company, requests leave to file a Supplemental Brief in Opposition to the Petition for Writ of Certiorari. The basis for this motion is that Petitioner, Landon, has filed a Supplemental Brief raising a new argument in support of his Petition. Respondent therefore requests leave to file the following Supplemental Brief for the sole purpose of responding to the new argument raised by Petitioner.

SUPPLEMENTAL BRIEF

In his Supplemental Brief, Petitioner Landon argues that the present case involves the same refund question posed by *Callery Properties, Inc. v. Federal Power Commission*, 335 F. 2d 1004 (5th Cir., 1964), *et al.*, in which this Court has issued writs of certiorari (Nos. 678, 671, 714 and 756, October Term, 1964). That argument erroneously assumes that whatever limitations the Natural Gas Act imposes on the refund-ordering powers of the Commission in a §7 certificate proceeding apply also to a common-law contract action.

The present case is a common-law contract action arising under Kansas law. In deciding for Northern, neither the trial court nor the Tenth Circuit ordered "reparations". Both courts held that the rights and liabilities of Northern and Landon were to be determined from their contracts and that Landon's effective rates on file with the Commission were his initial contract rates, unaffected by the void 11¢ minimum price order. Thus, the effect of the Tenth Circuit decision is to require Landon to abide by his contracts and to receive and retain no more than the rates provided in his effective filed rate schedules; and Landon has not referred to this Court any decision holding that an order or judgment requiring repayment of amounts collected in excess of effective filed rates can be considered a reparation order proscribed by the Act.

Necessarily then, Landon has premised his whole "reparations" argument on the false assumption that the Tenth Circuit found his effective filed rates to be 11¢. But the Tenth Circuit actually held that his effective filed rates are the initial contract rates; and, there-

fore, regardless of how this Court might decide the *Callery Properties* group of cases, that decision cannot support the contention that the Tenth Circuit decision constitutes an invalid reparation order.

Moreover, Landon's references to a "certificated rate" of 11¢ are erroneous. As distinguished from the *Callery Properties* group of cases wherein the Commission twice held hearings concerning the propriety of the initial rates and twice issued certificates at specific rate levels, the Commission order issuing Landon a certificate does not refer to "the eleven cent rate" or any other specific rate. 16 FPC 1430. In fact, contrary to Landon's statement, no hearings were even held on his certificate application (R. 72, 100).

It is therefore respectfully submitted that any decision by this Court in cases involving the refund-ordering powers of the Commission in proceedings under Section 7 of the Act cannot affect the present case.

Respectfully submitted,

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